

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 640 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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G S R T C

Versus

S M VYAS

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Appearance:

MR N.V.Anjaria for Mr.SN SHELAT for Petitioner

MR JV DESAI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 25/07/96

ORAL JUDGEMENT

Gujarat State Road Transport Corporation(hereinafter referred to as the Corporation) has filed the present petition under article 227 of the Constitution of India. The respondent S.M.Vyas was working as a clerk with the petitioner corporation in the month of July 1980. He was working at the Dholka depot of the petitioner corporation. When the accounts officer

checked his table and it was found that he had not credited all the amounts received by him towards issuing students' passes. Therefore, notice was issued to him and he immediately deposited the amount of Rs. 40.50 p. Thereafter he was chargesheeted and a departmental inquiry was held. He was awarded punishment of stopping of only increment for two years without permanent effect after it was found that he had committed misconduct with which he was charged. He had preferred an appeal but the same was dismissed. Thereafter, he approached the Industrial Tribunal, Ahmedabad and the Presiding Officer of the Industrial Tribunal, Ahmedabad by his order dated 22.8.84 has set aside the said punishment by holding that the act committed by the respondent was only an irregularity and the punishment awarded to him, was neither reasonable nor proper.

2. The respondent had contended before the Industrial Tribunal that the inquiry held against him was invalid and illegal as he was denied the opportunity to defend himself his request for adjournment and then proceeded to hold an inquiry for the charges with which he was charged.

3. Both the parties had produced documentary evidence before the inquiry authority. It was not at all disputed that the respondent S.M.Vyas was working as clerk at Dholka depot and in discharge of his duties he was receiving the amounts from the students towards the students' concession passes and that when his accounts were checked it was found that he had not credited all the amounts. There was less credit of Rs. 40.50 p. It was not disputed before the Industrial Tribunal that said amount of Rs. 40.50 p. was credited by the respondent. Therefore, in view of the undisputed facts, the finding recorded by the Industrial Tribunal that the workman had not committed misconduct is illegal and perverse. When it is an admitted fact that he had received the amount towards student concession passes and he has not credited the same in the accounts of the petitioner corporation and he had subsequently credited the said amount in the accounts of the petitioner-corporation, then it is quite clear that it is a case of temporary misappropriation.

4. It seems that the learned Presiding Officer of the Industrial Tribunal was not clear about his conclusion. At one stage he has recorded a finding that the delinquent had not committed any misconduct with which he was charged; whereas in the last para of his reasoning he says that the punishment is inadequate. The

finding recorded by the Presiding Officer of the Industrial Tribunal that the delinquent respondent had not committed misconduct with which he was charged, is a perverse finding in view of the fact that he himself has mentioned that there was no dispute of the fact that the delinquent had not credited the amount of Rs. 40.50 received by him towards issuing of the student passes on the date when he received the same and that the same amount was subsequently credited by the delinquent.

5. The learned Presiding Officer of the Industrial Tribunal has observed in para 8 of his order as under.

"...One thing is clear that this clerk where he was working and during that work, it was found during the inspection that the amount of Rs. 40.50 which has been received frequently from the students passes, the said lessor amounts were credited and as soon as he informed about the same, immediately he had remitted this amount in Dholka Depot and for that, there is no dispute..."

After recording the above undisputed facts, the learned Presiding Officer, Industrial Tribunal goes to observe that it would be only an irregularity and not a case of dishonest misappropriation of the property of the corporation. It is very pertinent to note that the order of the learned presiding Officer, Industrial Tribunal does not mention that the respondent had given certain explanation for his failure to credit the amount and that explanation given by him is acceptable and that he accepts the same. The learned Presiding Officer has further observed in his order that the order of punishment by the disciplinary authority is not reasonable and proper. But the order of punishment of stopping one increment for two years without future effect could not be said to be disproportionate or grossly inadequate in view of the misconduct committed by the petitioner. It must be further mentioned here that the Industrial Tribunal can interfere with the order of punishment only in case of dismissal or discharge as has been held by the decision of this Court in the case of Gujarat State Road Transport Corporation vs. Prabhashanker K. Acharya 1992(2) GLH 354.

6. Thus the order passed by the learned Presiding Officer of the Industrial Tribunal will have to be

interfered with by exercising discretionary power under article 227 of the Constitution in view of the fact that the same is illegal and perverse. I, therefore, allow the present petition and set aside the order passed by the Presiding Officer of the Industrial Tribunal Ahmedabad on 22.8.84 and the order of punishment awarded by the disciplinary authority against the respondent stands restored. No order as to costs.

(S.D.Pandit.J)